

(2013) 12 CAL CK 0036
In the Calcutta High Court
Case No : C.O. No. 4111 of 2012

Purnima Mukherjee and Others

APPELLANT

Vs

Sri Gopal Podder and Others

RESPONDENT

Date of Decision : 20-12-2013

Acts Referred:

Citation : (2013) 12 CAL CK 0036

Hon'ble Judges : Asim Kumar Mondal, J

Bench : Single Bench

Advocate : Bilwadal Bhattacharyya and Mr. Arkaprava Sen, for the Appellant;
Debapriya Chatterjee, Danish Taslim and Mr. Farooque Ali, for the Respondent

Final Decision : Dismissed

Judgement

Asim Kumar Mondal, J.—This is an application under Article 227 of the Constitution of India challenging the order being No. 1 dated October 3rd, 2012 passed in Misc. Appeal No. 146 of 2012 by the learned by the learned District judge at Barasat along with the order being No. 22 dated September 10th, 2012 passed in Misc. Case No. 212 of 2012 by the learned Civil Judge, Junior Division, 1st Court at Barasat. Both the orders arising out of Title Suit No. 404 of 2009. The opposite parties herein filed a suit for specific performance of contract against the petitioners/defendants. The case of the parties in short is that the plaintiffs filed an application for injunction before the learned Court below which was refused by order dated July 31st, 2009. The plaintiffs preferred an appeal against the said order of refusal before the High Court being No. F.M.A.T. 1166 of 2009. In the said appeal an interim order of injunction was passed till the disposal of the appeal. The Miscellaneous appeal being No. F.M.A.T. 1166 of 2009 was disposed of by the High court by order dated December 14th, 2011 directing the learned Trial Court to treat the application filed by the petitioners for vacating the interim order as affidavit-in-opposition to the application for injunction filed in the main suit and also liberty was given to file affidavit-in-reply by the opposite parties and further directed to dispose of the injunction matter within

three weeks therefrom.

2. During pendency of the said injunction matter the plaintiff No. 2 died and the legal heirs were substituted under Order 22 Rule 4 of the Civil Procedure Code. The said order of learned Trial Court allowing the prayer for substitution under Order 22 Rule 4 of the CPC was challenged in revisional application before the High Court being No. C.O. 1461 of 2012.

3. The Hon'ble Court dispose of the said revisional application with a direction to dispose of the prayer for substitution under order 22 Rule 9 of the CPC if such recourse is taken and thereafter dispose of the injunction matter within three weeks from the date of communication of the order.

4. The plaintiffs/opposite parties filed accordingly an application for substitution under Order 22 rule 9 of the CPC along with an application u/s 5 of the Limitation Act read with Section 151 of the Civil Procedure Code. An application also filed under order 39 rule 1 and 2 read with Section 151 of the Civil Procedure Code. The prayer for substitution has been registered as Misc. Case No. 212 of 2002.

5. In the Trial Court by an order dated October 6th, 2012 directed both the parties to maintain status quo for a limited period. Challenging the said order an appeal was preferred by the opposite parties herein, which was registered as Misc. Appeal No. 146 of 2012. In the said appeal one petition was filed praying stay of operation of the impugned order.

6. Learned District Judge refused the prayer for stay of impugned order and transfer the Misc. Appeal to the Court of Additional District Judge, 5th Court, Barasat for disposal.

7. The petitioners being aggrieved by and dissatisfied with the order impugned has preferred the present revisional applications on the ground that the orders impugned are illegal, improper and suffers from material irregularity which required to be interfered and set aside.

8. I have heard at length the submissions of learned Counsel Mr. Bilwadal Bhattacharyya with Mr. Arkaprava Sen appearing on behalf of the petitioners and Mr. Debapriya Chatterjee appearing on behalf of the opposite parties.

9. Mr. Bhattacharya, learned Counsel submits that learned Trial Court has passed the order of injunction in the form of status quo without considering the background of the case as well as the fact that the prayer for substitution under order 22 Rule 9 of the CPC is pending. It is further submitted that there was no urgency and the balance of convenience and inconvenience was also in favour of the present petitioners.

10. It is also submitted that learned Trial Court did not comply the directions of Hon'ble Court in disposing of the prayer for injunction.

11. It is clear from the facts and circumstances as placed before me, the order of injunction was passed in Misc. Case under Order 22 Rule 9 of the CPC for setting

aside the abatement. The learned Trial Court has clearly observed that if an order of injunction is not passed against the opposite parties who are petitioners herein, they may transfer the suit property to any third party and in such circumstances there is apprehension of multiplicity of proceedings.

12. Learned Trial Court has in my considered view properly and perfectly exercised his discretion to protect the right, title and interest of the plaintiffs/opposite parties herein. The injunction order passed by learned Trial Court in the form of status quo for a limited period will not cause any prejudice to any of the parties.

13. Learned Lower appellate Court has refused the prayer for stay of the operation of the order of injunction in the form of maintaining status quo passed by the learned Trial Court. The learned District Judge has exercised its discretion properly and the order impugned suffers from no illegality or impropriety.

14. Admittedly the petitioners/opposite parties in Misc. Case has already entered appearance and they shall have the liberty to pray for vacating the order of injunction on a contested hearing.

15. I do not find any scope to interfere in the order impugned, in view of the facts and circumstances and also the findings of the learned Judge of the Trial court and Appeal Court.

16. In the result the revisional application is liable to be dismissed.

17. Thus, the revisional application is dismissed without costs. Urgent Photostat Certified Copy of this order if applied for be given to the parties on priority basis.